S.B.CRIMINAL MISC. BAIL APPLICATION NO.7263/2007
Sandeep vs. The State of Rajasthan
Date of Order : 17th December 2007

HON'BLE MR. JUSTICE RAGHUVENDRA S. RATHORE

Mr. A.K.Gupta, for the petitioner.
Mr. Ashwani Sharma, Public Prosecutor.

Heard learned counsel for the petitioner, learned Public Prosecutor for State and also perused the material on record as well as the impugned order dated 3.10.2007 passed by the learned Court-below.

2. This bail application has been filed by the petitioner/husband under Section 438 Cr.P.C. in First Information Report No. 33/2007 registered at Police Station, Aklera, District, Jhalawar for the offence under Section 304-B IPC.

3. Learned counsel for the petitioner has submitted that there are no allegations against the petitioner and other the co-accused persons have been released on bail. He has also submitted that earlier a compromise had been entered into between the parties wherein the deceased have dictated the terms which were accepted. He has referred to the provisions of Section 304-B IPC, and the

explanation appended to it. With reference to Section 2 of the Dowry Prohibition Act, the learned counsel for the petitioner has submitted that the offence of dowry death is not attracted in a case of love marriage, as had been solemnized in the present case between the deceased and the petitioner. Learned counsel for the petitioner has placed reliance upon the case of **Satveer Singh and Others Vs. State of Punjab AIR 2001 (SC) 2828 and the Case of Lata Singh Vs. State of U.P. AIR 2006 (SC) 2522.**

4. On the other hand, the learned Public Prosecutor has submitted that a bare perusal of the compromise itself, as reproduced by the petitioner in his petition, goes to show that there were strained relations between the parties and the same was entered into to resolve the dispute with regard to dowry. The learned Public Prosecutor has further submitted that the instant case is not one of purely love marriage but in fact, the customary marriage was also solemnized in the present case on the occasion of 'Dev Uthni Gyaras'. In this reference, the learned Public Prosecutor has read

before me the statements of Suresh Chand, Smt. Sarita Devi, Indra Kumar, Smt. Gopali Bai, Golu and Smt. Dhapu. The learned P.P. has also submitted that the death of the deceased was an un-natural one and in this context, he has invited the attention of the Court to the post-mortem report wherein mention has been made with regard to ligature mark on the left side of the neck of the deceased and the cause of death being asphyxia.

Apart from referring to the statements of the witnesses who are the neighbors like Mohan Singh etc. to show that the deceased was met with torture and harassment, the learned Public Prosecutor has also submitted that the deceased had died in the house of the petitioner. The learned Public Prosecutor has also relied upon the cases of **Kamesh Panjiyar Vs. State of Bihar (2005) 2 SCC 388, Smt. Shanti And Others Vs. State of Haryana, (1991) 1 SCC 371 and Kans Raj Vs. State of Punjab and Others (2000)5 SCC 207.**

5. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties. This Court had also called

for the Case diary and perused the same. The evidence collected by the police during the course of investigation , includes the suicide note which was seized by the police from underneath the cloths worn by the deceased, on 3.2.2007 at 9.55 a.m. A reference of this suicide note has also been made in the 'Panchnama' prepared by the Investigating Agency. In the said suicide note, the deceased had expressed about the harassment caused by the in-laws, and as a result of which she is said to have committed suicide.

6. Without expressing any opinion on the merits of the case but taking into consideration the overall facts and circumstances as well as the material available in the Case diary, it cannot be said that the petitioner/husband has no connection with the commission of crime or that the instant case has been falsely lodged against him. The power exercisable under Section 438 Cr.P.C, is extra ordinary in character and the same is to be exercised only in exceptional cases where it appears that the person may be falsely implicated. Therefore, in my considered opinion, the present

case is not a fit one from grant of indulgence of anticipatory bail to the accused petition.

7. Hence, the present application for bail under Section 438 Cr.P.C, is dismissed.

(RAGHUVENDRA S. RATHORE),J.

Bhatt